

DOCKETED	
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STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

Western States Petroleum Association
Petition for Rulemaking

**ORDER DENYING PETITION FOR
RULEMAKING**

I. INTRODUCTION AND PROCEDURAL HISTORY

Senate Bill (SB) X1-2 (Stats. 2023, 1st Ex. Sess. 2023, ch. 1), which took effect on June 26, 2023, amended Public Resources Code Section 25354, among other changes. SB X1-2 added new reporting requirements and enforcement mechanisms to the existing reporting framework of the Petroleum Industry Information Reporting Act (PIIRA) of 1980. Over the past year, the CEC adopted a suite of emergency regulations that implement and make specific the requirements of Section 25354, with emphasis on those sections added or amended by SB X1-2.

On October 18, 2023, the CEC instituted a rulemaking proceeding to consider, among other topics, regulations and guidelines implementing Section 25354.¹ On February 14, 2024, the CEC adopted emergency regulations regarding the spot market reporting requirements in Section 25354(l), which took effect on February 26, 2024.² On May 8, 2024, the CEC adopted the Senate Bill X1-2: California Refinery Maintenance Guidelines, which implement the maintenance reporting requirements in Section 25354(m).³ On May 8, 2024, the CEC also adopted emergency regulations regarding the marine import reporting requirements and refining margin reporting requirements located in Section

¹ See General Rulemaking Proceeding for Developing Regulations, Guidelines, and Policies for Implementing SB X1-2 and SB 1322, Docket No. 23-OIR-03.

² See Notice of Approval of Emergency Regulatory Action for Revised SB X1-2 Spot Market Reporting Requirements (Feb. 28, 2024), TN 254755, Docket No. 23-OIR-03.

³ See Refinery Guidelines Material (April 30, 2024), TN 256082, Docket No. 23-OIR-03; Resolution of the California Refinery Maintenance Reporting Guidelines (May 10, 2024), TN 256272, Docket No. 23-OIR-03. These guidelines are exempt from the Administrative Procedure Act pursuant to Section 25354(n)(2).

25354(j) and Section 25355, respectively, which took effect on May 20, 2024.⁴ On July 10, 2024, the CEC adopted emergency regulations regarding merchant terminal position holder reporting requirements in Section 25354(k), which took effect on July 22, 2024.⁵ On July 12, 2024, the CEC sent a letter to industry seeking the projection data required by Public Resources Code Section 25354(c).

On September 3, 2024, the Western States Petroleum Association (WSPA or Petitioner) filed a petition requesting the California Energy Commission (CEC) institute a formal rulemaking (Petition) regarding implementation of Public Resources Code Section 25354, as amended by SB X1-2. The Petition asserts that such a rulemaking is needed to clarify terms and processes in Section 25354 and to ensure consistent interpretation and implementation of the laws.

On September 17, 2024, the Executive Director certified that the petition met the filing requirements of California Code of Regulations, title 20, section 1221. On September 18, 2024, CEC staff filed a recommendation that the CEC deny the Petition because, among other things, the petition did not propose specific regulatory language which, at a minimum, would be needed to satisfy the requirement that an agency immediately schedule a public hearing in conformance with Administrative Procedure Act provisions upon approval of a rulemaking petition.

Staff also recommends denial of the petition as unnecessary because the laws at issue are self-executing, the CEC has been receiving data pursuant to the statute and existing regulations with no other entity expressing the need for clarification claimed by Petitioner, and all of the topics identified by the Petitioner are within the scope of the CEC's existing proceeding on this topic (Docket No. 23-OIR-03). CEC staff explained that, through this existing proceeding, the CEC is continuously engaging with stakeholders to receive feedback on whether new or modified regulations or guidelines are needed to implement Public Resources Code section 25354 and other PIIRA provisions. The CEC considered the Petition at its October 3, 2024 Business Meeting.

II. CEC FINDINGS

Based on the entirety of the record, the CEC finds that:

- 1) The Petition, filed with the Executive Director on September 3, 2024, meets the requirements of California Code of Regulations, title 20, Section 1221.
- 2) The petition requests that the CEC initiate a formal rulemaking process to clarify and implement the reporting requirements in Public Resources Code Section 25354, including the requirements of subdivision (c) pertaining to 90-day

⁴ See Notice of Approval of Emergency Regulatory Action (May 21, 2024), TN 256479, Docket No. 23-OIR-03.

⁵ See Notice of Approval of Emergency Regulatory Action (Jul. 24, 2024), TN 257974, Docket No. 23-OIR-03.

projections and the requirements of subdivision (m) pertaining to refinery maintenance reporting. The petition does not propose new regulatory language or propose amendments to existing regulatory language, but instead seeks to initiate a process by which to develop such language.

- 3) Implementation of Public Resources Code Section 25354, as amended by SB X1-2, continues to benefit from an open and transparent public process with robust engagement from regulated entities. The statutory provisions for which the Petitioner requested clarification are within the scope of the CEC's existing General Rulemaking Proceeding for Developing Regulations, Guidelines, and Policies for Implementing SB X1-2 and SB 1322 (Docket No. 23-OIR-03).
- 4) Government Code section 11340.7(c) requires that the CEC, within 30 days of the petition's filing, either deny the petition and indicate why the agency has reached its decision on the merits or grant the petition and schedule the matter for public hearing in accordance with the rulemaking provisions of the Administrative Procedure Act (Gov. Code section 11346 et seq.). California Code of Regulations, title 20, Section 1221(c) interprets this provision and requires either a written denial of a petition for rulemaking, or the issuance of an appropriate order pursuant to California Code of Regulations, title 20, Section 1222 within 30 days of the filing of the petition.
- 5) To the extent that this petition requests the CEC adopt an Order Instituting a Rulemaking and adopt, amend, or repeal a regulation pursuant to Government Code sections 11340.6 and 11340.7, granting it would subject the CEC to an untenable timeline and foreclose the possibility of meaningful public participation.
- 6) Public Resources Code Sections 25213 and 25218(e) authorize the CEC to adopt rules and regulations, as necessary, to carry out its statutory duties. The CEC has further authority to implement the provisions of Chapter 4.5 of Division 15 of the Public Resources Code through Administrative Procedure Act-exempt regulations and actions pursuant to Public Resources Code Section 25354, subdivisions (n)(2) and (o), and to adopt emergency regulations and orders pursuant to Public Resources Code Section 25367.
- 7) The terms of SB X1-2 and Public Resources Code section 25354, including the specific sections identified in the Petition, are self-executing and the need for a rulemaking is not certain at this time.

III. CONCLUSION AND ORDER

- 1) For the reasons stated above, the CEC hereby DENIES WSPA's Petition for Rulemaking.
- 2) CEC staff is directed to file this Order and supporting documentation with the Office of Administrative Law in accordance with Government Code section 11340.7(d).

IT IS SO ORDERED.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on October 3, 2024.

AYE: Hochschild, Gunda, McAllister, Monahan, Gallardo

NAY: NONE

ABSENT: NONE

ABSTAIN: NONE

Dated: October 4, 2024

SIGNED BY:

Kristine Banaag
Secretariat